UNIVERSITY OF KENTUCKY
COLLEGE OF LAW
LAND USE PLANNING PROFESSOR MOORE
FINAL EXAMINATION FALL 1997
TIME LIMIT: 3 HOURS

INSTRUCTIONS

This is an open book examination. You may use the casebook, any materials distributed in class, your class notes, any other materials you personally prepared - with or without the assistance of your classmates - prior to the exam, and any commercial treatises or outlines. You may not consult your classmates during the examination.

The exam consists of 6 questions. The point allocation is as follows:

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The number of points allocated to each question indicates how much time you should spend on it.

Write your answers in pen in the blue books. Only write on the front side of each page of the blue book(s). Be sure to put your exam number on this page and the cover of each blue book. At the end of the exam, please number your blue books, e.g., 1 of 2, 2 of 2, and turn in your exam, your blue book(s), and any scratch paper you have used. These materials should be collected and turned in together inside one blue book.

All academic endeavors of the students of the University of Kentucky College of Law are governed by the Honor Code. The Honor Code prohibits lying, cheating, stealing, and interference with academic pursuits. In addition, the Honor Code places an affirmative duty to report a breach of the Code on all students. A failure to report is a violation of the Honor Code.

GOOD LUCK!

QUESTION ONE

(SUGGESTED TIME: 45 MINUTES)

In 1990, the State enacted SRS § 9.9 which authorizes local jurisdictions:

to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development ...
The State identified (1) the need to encourage economic opportunity for all citizens of the State, (2) the need to promote the availability of affordable housing, and (3) the need to preserve existing housing stock as justifications for the statute.

Following notice and hearing, a City in the State enacted CO § 25.25 which provides that

Low-income tenants who are displaced by demolition, change of use, substantial rehabilitation, or removal of use restrictions and who comply with the requirements of this provision, shall be paid a relocation assistance payment in the amount of $2,000.

Under the ordinance, the owner of the dwelling unit is responsible for payment of ½ of the total amount of relocation assistance due to eligible tenants. The City is responsible for payment of the remaining ½ of the relocation assistance.

At the hearing on the proposed ordinance, a City employee, Ms. Green, testified regarding the result of an informal study she had conducted regarding the average costs of relocating for displaced tenants. Ms. Green called 3 or 4 local moving companies to determine the average cost of moving a household from a 1-bedroom apartment to some other location in the City. She referred to a monthly report published by a local realty company to learn the average rent in the City, to use in determining first and last months' rent costs. She also contacted a local real estate analyst who had recently completed a study of the typical amount required for damage and security deposits by landlords. She testified that the various moving costs, on average, totalled $2,191.

Client owns 5 buildings in the center of City. The buildings currently house 25 low-income tenants. Client would like to raze the buildings and replace them with modern, high-rise condominiums to house higher-income residents, but CO § 25.25 would impose an additional $25,000 cost on the project. Client contends that the additional $25,000 charge makes the proposal untenable. Client has come to your firm for advice.

Please draft a memorandum addressing the constitutional ground or grounds upon which the ordinance may be challenged and assess the likelihood of success of any such challenge.

QUESTION TWO

(SUGGESTED TIME: 30 MINUTES)

Forest Hills is a small community of 20,000 located about 10 miles from Central City, Kentucky. Central City has a population of 500,000. The population of Forrest Hills is 95% white and predominately upper middle class. Eighty percent of the population of Central City is white while 15% is black and 5% is hispanic. Fifty percent of Central City's citizens have low or moderate incomes. Of the 250,000 low or moderate income residents, 180,000 are white while the remainder are black or hispanic.

In 1995, Forest Hills enacted a growth control ordinance. The express purpose of the ordinance was "to promote orderly growth, to maintain the existing character of the community, and to avoid overtaxing the city's ability to provide necessary public services." The city limited the number of building permits it would issue each year to 300. In 1994, prior to the enactment of the ordinance, about 450 building permits were issued.

The Forest Hills ordinance contained a complex formula for awarding building permits. Proximity to existing public facilities, such as roads, schools, sewers, etc., was the most important consideration.

In 1996, a developer of low and moderate income housing applied for a permit to construct a 40-unit garden apartment building. A public interest organization, Housing Equity, Inc., planned to purchase the project when completed and attempt to ensure that a substantial portion of the apartments were occupied by low and moderate income residents of Central City. In late 1996, the city rejected the developer's building permit because the site involved was 3/4 of a mile
from the nearest sewer. According to the city's Public Works Plan, no sewer extension was planned for that area until 1999.

Jasmine Hurston, a black low-income resident of Central City who works in Forest Hills and had hoped to rent an apartment in the proposed building, has come to you for advice. She would like to know whether she, or anyone else, can sue to compel the city to issue the building permit, and on what theory or theories, if any, such a suit is likely to succeed.

QUESTION THREE

(SUGGESTED TIME: 30 MINUTES)

In 1955, Midtown Development Company acquired a vacant tract of land on the south side of Hills Township, Kentucky. Ten years later, Hills Township adopted its first comprehensive plan and zoning ordinance. The comprehensive plan designated Midtown's vacant lot for office, industry and research park use and the zoning ordinance zoned the tract for such use.

Over the years, development in Hills Township slowly inched toward the Midtown property while the north side remained undeveloped. In 1990, Midtown hired a licensed land planner and architect to prepare a development plan for the tract as permitted by the ordinance. In 1995, the development plan was completed and Midtown erected a "Build-to-Suit" sign on the property. Midtown, however, did not submit any subdivision or site plan approval requests to the municipality.

Two months after the sign was erected, two towns immediately north of Hills Township were flooded, although there was no flooding in Hills Township. Immediately after the flooding, the Hills Township Council rezoned a large area on the south side of town, including the Midtown tract, as Preservation Property. The Preservation Property Zone only permits the following uses: (a) breeding of fish, (b) zoological park, and (c) tree farm. The council explained that the amendment was justified because of the recent flooding north of the township.

Midtown would like to develop its property and has come to your law firm for advice. The senior partner has asked you to draft a memorandum addressing the following questions:

(1) What statutory authority, if any, may Midtown rely on to challenge the amendment? Is Midtown likely to be successful?

(2) What other (nonconstitutional) legal doctrines, if any, may Midtown rely on to avoid applicability of the amendment and rely on the terms of the original zoning ordinance? Is Midtown likely to be successful?

QUESTION FOUR

(SUGGESTED TIME: 30 MINUTES)

John Depp owns a tract of land on the south side of Bluegrass, Kentucky. The tract is zoned Agricultural Rural (A-R). Permitted uses include agricultural, plant nurseries, and hunting, fishing, trapping, and native animal game preserves. Conditional uses include airport use. Nowhere in the city is airport use permitted as a matter of right.

The Bluegrass Airport Authority ("Authority") would like to expand the Bluegrass Airport. Accordingly, it has entered into negotiations with Depp to purchase the property, which borders the Bluegrass airport, so long as a conditional use permit is granted authorizing use of the Depp property for airport purposes.

Depp applied to the Board of Adjustments ("Board") for a conditional use permit. Three neighborhood associations
and 30 irate neighbors appeared at the hearing. Acknowledging that an expansion of the Bluegrass Airport would benefit the Bluegrass economy, the Board nevertheless denied the conditional use permit. The Board found that expansion of the airport would create additional air pollution and thus was not in the public's best interest.

Depp has come to you for advice. He would like to know what, if anything, he can do to appeal this decision. Please advise him as to (1) the body or bodies, if any, that would consider an appeal, (2) the standard of review, if any, the body or bodies is likely to apply, and (3) the likelihood of the decision being overturned. Also, please advise Depp as to whether a claim that airport use should be allowed as a matter of right in agricultural rural zones is likely to be successful.

QUESTION FIVE

(SUGGESTED TIME: 25 MINUTES)

Peter Benton owns a 2-story summer home on the Majestic Lake shoreline in Magnificent, Kentucky. In 1994, he purchased a narrow waterfront lot immediately to the west of his summer home. The property was - and is - zoned "urban residential" which requires a minimum 10,000 square foot lot in order to build a structure on a shoreline and requires the structure to be set back at least 15 feet from the line of ordinary high water.

The entire lot is approximately 8,500 square feet, but most of it is underwater. A small 3-sided cement bulkhead was built on the lot 30 to 40 years ago, but a good portion of the fill (landward of the bulkhead) has been removed by wave action. Only the area of the fill within the bulkhead, about 80 by 42 feet, is buildable. The buildable lot area is about 3,500 square feet.

Benton would like to build a 2-story residence with a 5-foot setback from the bulkhead on the lot to use as a guesthouse. The buildable area of the lot is 80 by 42 feet while the proposed building is 60 by 30 feet.

Benton has come to you for advice. Please draft a memorandum what he must do in order to receive permission to build the guesthouse and whether such permission is likely to be granted.

QUESTION SIX

(SUGGESTED TIME: 20 MINUTES)

On May 6, 1960, Dorothea Brooke acquired a 10 acre tract of land in Middlemarch. At the time that Brooke acquired title to this land, Middlemarch had no zoning ordinance in effect and the tract of land and surrounding area were undeveloped.

 Shortly after Brooke purchased the land, she erected a barn and house on the land and began a hog farming business. Brooke has continued this business without interruption since acquiring title to the land in 1960. In 1980, Brooke built a second barn on her lot and doubled her inventory of hogs. In 1982, Brooke built a third structure on her farm and began slaughtering hogs on the farm. Brooke uses the most advanced method of farming

On May 6, 1985, the county adopted a zoning ordinance classifying Brooke's property as restricted residential (R-1) property.

In 1990, Sir James Cheatam purchased a 500 acre tract of land directly west of Brooke's farm and began to build a residential subdivision on that land. Cheatam had no trouble selling the houses on the far western edge of the subdivision but has had trouble selling the houses lying in the middle or eastern edge of the subdivision because of the noise and odor created by Brooke's hog farm.
Cheatam has come to you to ask what, if anything, he can do to stop Brooke's hog farm. Please draft a letter advising Cheatam of his option(s) and which, if any, are likely to be successful.